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October 29, 2003

Via Electronic Mail Delivery

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Re: *Written Ex Parte Communication*
 Wireless Local Number Portability Implementation
 CC Docket No. 95-116

Gentlemen:

Sprint Corporation below responds to an October 17, 2003 *ex parte* submission made by Qwest.¹ Wireless carriers will become LNP-capable less than one month from now, and LEC-wireless porting will become technically feasible on November 24, 2003. Sprint urges the Commission to act expeditiously in addressing the LEC-wireless porting issues that have been raised.

I. THE COMMISSION FACES A STARK CHOICE IN ADDRESSING LEC-WIRELESS PORTING ISSUES

Two radically different visions of number portability have been placed before the Commission. Wireless carriers and some ILECs (including Sprint) support the principle that number portability should be available everywhere LNP is technically feasible (and where a request has been made). Such an approach would increase consumer options and intensify competition between the LEC and wireless industries, resulting in consumer benefits.

In contrast, other ILECs (*e.g.*, Qwest, BellSouth, rural ILECs) want the Commission to delay the date that their customers can port to wireless carriers and/or restrict the availability of LEC-wireless porting even in circumstances where such porting is technically feasible. Perhaps

¹ See Letter from Gary Lytle, Qwest, to Marlene Dortch, FCC Secretary, CC Docket No. 95-116 (Oct. 17, 2003) ("Qwest Oct. 17 Letter"). Qwest still fails to address many of the points Sprint made in its October 8, 2003 letter. See Letter from Luisa Lancetti, Sprint, to John Rogovin, General Counsel, William Maher, WCB Chief, and John Muleta, WCB Chief, CC Docket No. 95-116 (Oct. 8, 2003).

realizing that wireless carriers are effective competitors, these ILECs would have the Commission restrain by regulatory fiat the choices available to consumers. And apparently also fearing the large local calling areas offered by most wireless carriers, these ILECs want the Commission effectively to require wireless carriers to “downsize” their services so they look more like LEC services. Qwest’s proposal – that the FCC rule that LNP “requires that the [wireless] customer does not change his/her physical location”² – illustrates the ILEC attempt to distort competition.

It is important to emphasize that the Commission adopted and confirmed the wireless LNP rule because it found the rule “necessary to preserve consumer choice and enhance competition among CMRS carriers *and between the wireless and wireline industries.*”³ Indeed, as Qwest acknowledges:

This [wireless LNP] mandate is in the public interest because it will promote competition among cellular, broadband PCS, and covered SMR carriers, as well as **among CMRS AND wireline providers.** * * * [S]ervice provider portability will **encourage [wireless-wireline] competition**, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services.⁴

The wireless submarket is fiercely competitive, with 30 percent of wireless customers changing carriers each year – *even without LNP.*⁵ By contrast, ILECs still serve 90 percent of all residential customers and their networks are used in the provision of services to 97 percent of all residential customers.⁶ The wireless LNP rule has the promise to inject broader competition into LEC residential submarket. Indeed, in many areas, intermodal competition offers residential customers an alternative to ILEC services, and LEC-wireless porting will promote facilities-based intermodal competition. As the Consumers Union has stated:

The public interest is clearly served by maximizing customer choice and universal porting. Ensuring that wireline consumers can take their telephone number with them to wireless carriers with as few barriers as possible will give consumers

² Qwest Oct. 17 Letter at 12.

³ *Verizon Wireless LNP Forbearance Denial Order*, 17 FCC Rcd 17972, 14986 ¶ 34 (2002)(emphasis added).

⁴ Qwest Oct. 17 Letter at 10 (bold/emphasis in original), *quoting First LNP Order*, 11 FCC Rcd 8352, 8433 ¶ 155, 8437 ¶ 160 (1996).

⁵ *See, e.g., Eighth CMRS Competition Report*, WT Docket No. 02-379, FCC 03-150, at ¶ 57 (July 26, 2003).

⁶ CLECs using their own “last mile” facilities serve less than three percent (3%) of all LEC residential customers. *See Local Competitive Report*, Tables 2 and 3 (June 2003).

competition where they need it most – facilities based competition for local telephone service.⁷

Qwest maintains that the rules require competitive neutrality as between providers of different services. This does not mean, however, that it is the Commission's responsibility to eliminate the differences between service providers. Wireless carriers do offer different services, services that provide connectivity in large areas at flat rates. These services are naturally attractive to consumers. Qwest seeks, however, to have the Commission restrict these offerings so that wireless service offerings mirror those offered by Qwest. The Commission must reject such a distorted view of competitive neutrality.

Chairman Powell has observed that a “well-structured market policy is one that creates the conditions that empower consumers. It lets consumers choose the products and services they want – which is their right as free citizens. . . . No matter how worthy the purpose, rules that constrain markets can, in fact, deny or delay benefits to the consuming public”:

Thus, if you are truly committed to serving the public interest, bet on a winner and bet on market policy.⁸

If the Commission applies this standard, it must reaffirm the position espoused by the wireless carriers and reject the position advocated by Qwest and certain other ILECs.

II. ISSUES PERTAINING TO A PORT FROM A LEC CUSTOMER TO A WIRELESS CARRIER

Qwest does not seriously challenge its statutory obligation to permit its customers to port to wireless carriers. Section 251(b)(2) of the Act imposes on “each” LEC the “duty to provide, to the extent technically feasible, number portability.”⁹ Congress defined number portability as the ability of customers to “retain, at the same location, existing telecommunications numbers . . . when switching from one telecommunications carrier to another.”¹⁰ The Commission held long ago that wireless carriers are telecommunications carriers and, as such, “LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers.”¹¹ Thus, so long as a wireless carrier is LNP-capable and provides its services “at the

⁷ Letter from Chris Murray, Consumers Union Legislative Counsel, to the Hon. Michael K. Powell, CC Docket No. 95-116, at 2 (Oct. 22, 2003).

⁸ See Michael K. Powell, FCC Chairman, *Consumer Policy in Competitive Markets*, Remarks before the Federal Communications Bar Association (June 21, 2003).

⁹ 47 U.S.C. § 251(b)(2).

¹⁰ *Id.* at § 153(30).

¹¹ *First LNP Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996). See also *id.* at 8443 ¶ 172 (“We regard switching among wireline service providers and broadband CMRS providers, or among broadband CMRS providers, as changing service providers” and thus falling within the definition of service provider portability.); Letter from John Muleta, Chief, WTB, to John Scott, Verizon Wireless, CC Docket No. 95-156, DA 03-2190, at 3 (July 3, 2003) (“The Commission’s rules require porting between wireless and wireline carriers.”).

same location” where the LEC customer receives his LEC services, the LEC customer has the statutory right to port his/her telephone number to the wireless carrier.

Qwest states that “existing portability rules . . . confine service provider portability, and to a limited extent location portability (where ordered by a state commission), to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns.”¹² But what Qwest neglects to mention is that as part of the NANC process, the industry agreed that LEC-wireless porting “is permitted” so long as the wireless carrier provides its services at the same location where the LEC customer is currently receiving his/her LEC services:

Porting from a wireline service provider to a wireless service provider is permitted as long as the subscriber’s initial rate center is within the WSP’s [Wireless Service Provider’s] service area . . . With terminal mobility the [wireless] subscriber can be physically located anywhere.¹³

Sprint has difficulty understanding Qwest’s focus on rate center boundaries. In fact, the ILEC industry has conceded that “currently available wireless-wireline porting methodologies . . . me[e]t the criterion of rate center integrity within the technical limitations of LNP service provider portability.”¹⁴

Qwest asserts that wireless carriers seek “a sea of change in existing number portability rules” and that, as a result, the FCC must commence a new rulemaking proceeding.¹⁵ But Qwest does not identify a single existing rule that must be changed in order for LEC customers to enjoy

¹² Qwest Oct. 17 Letter at 1-2. This statement is not entirely accurate. While NANC’s recommendations, which FCC rules incorporate by reference, *see* 47 C.F.R. § 52.26(a), impose “rate center boundaries” on the provision of location portability, they do not impose the same “boundary” on service provider portability. *See* NANC – LNP Architecture Task Force, *Architecture & Administrative Plan for Local Number Portability*, at 6 ¶ 7.3 (April 23, 1997) (“If location portability is ordered by a state commission in the context of Phase I implementation of LRN, location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns.”). Rate center boundary limitations make no sense for service provider portability because, under the statute, such portability need be provided only if a competing carrier provides its services “at the same location” as the customer wanting to port.

¹³ NANC, *Local Number Portability Administrative Working Group Report on Wireless Wireline Integration* (May 8, 1998), Appendix D – Rate Center Issue, at 35 § 6.0 (“NANC Report”). The industry’s Report provided the example where a “wireline subscriber with telephone number 214-789-2222, located in RC [Rate Center] 7, wishes to change to wireless service while remaining at the same location.” Industry agreed that in this situation, “[p]orting would be permissible.” *Id.* at 35 § 5.0, Scenario A. Of course, a customer would likely not want to port his telephone number to a carrier that did not provide services at the location where the customer receives his existing services.

¹⁴ Wireline Position Paper, Appendix D – Rate Center Issue, at 40 § II.B.2 (May 8, 1998). Thus, the parade of horrors that that Qwest recites (*see* Oct. 17 Letter at 5-6 and Attachment 1) have no relevance to LEC-wireless porting. These are rather issues with location portability – not the LEC-wireless porting at issue. *Id.* at 1.

¹⁵ *See* Qwest Oct. 17 Letter at 11-12.

their statutory right to port to any carrier that provides services “at the same location” where the LEC customer receives his/her LEC services. FCC Rule 52.23(c) provides in pertinent part:

[A]ll LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.¹⁶

Sprint PCS is a telecommunications carrier and it has made a specific LNP request of Qwest. Qwest is thus obligated under this rule to permit its customers to port to Sprint. There is no basis to Qwest’s assertion that wireless carriers seek any rule change, much less “a sea of change in existing number portability rules.”¹⁷

In fact, it is Qwest that wants the Commission to adopt new rules (that would require a new NPRM). Specifically, Qwest asks the Commission to rule that LNP “requires that the customer does not change his/her physical location.”¹⁸ However, Qwest does not identify why the Commission should now restrict the way that 140 million customers use their wireless services. Qwest also does not explain how wireless carriers are to enforce a rule that purports to prohibit use of a mobile handset outside of the customer’s main rate center – at least if the customer is using a ported (vs. non-ported) number.¹⁹

Qwest also asks the Commission to rule that “the rate center of the customer’s TN [must] match the rate center of the customer’s physical address” and that “customer moves outside a rate center require a TN change.”²⁰ Qwest, however, never explains why wireless customers should be deprived of retaining their wireless number when moving from one part of town to another – simply because the new location happens to be in a different LEC rate center. NANC has observed that there are “no state or federal requirements to associate an NPA-NXX for a new [wireless] subscriber based on their residence, billing, or other location.”²¹ If Qwest believes that new number assignment restrictions should be imposed on wireless carriers and their customers, it should file a petition for rulemaking. Again, there is no basis to delay full LEC-CMRS porting.

¹⁶ 47 C.F.R. § 52.23(c).

¹⁷ Qwest Oct. 17 Letter at 11-12. Qwest’s reliance on *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003) (*see id.* at 11-12), is misplaced, as Sprint has previously documented. *See* Letter from Luisa Lancetti, Sprint, to John Rogovin, General Counsel, William Maher, WCB Chief, and John Muleta, WCB. CC Docket No. 95-115, at 7-9 Chief (Sept. 2, 2003). *See also Cost-Based Terminating Compensation*, CC Docket No. 95-185, FCC 03-215, at ¶¶ 22-25 (Sept. 3, 2003).

¹⁸ Qwest Oct. 17 Letter at 12.

¹⁹ It is unclear how Qwest believes its rate center boundaries should be monitored to ensure wireless customers with ported numbers do not take their handsets across these boundaries, *i.e.*, use their mobile phones for their intended purposes.

²⁰ Qwest Oct. 17 Letter at 12-13. Qwest does not identify whether it thinks wireless carriers should be required to use a customer’s residence, work or billing address as the “physical address.”

²¹ NANC, *Wireless-Wireline Integration*, Appendix D – Rate Center Issue, at 34 § 2.3 (May 8, 1998).

Congress has determined that LECs should be excused from permitting their customer to port for only one reason: technical infeasibility.²² LEC-to-wireless porting is not technically infeasible, and it is time for all LECs to recognize their statutory LNP obligation and to begin conducting intercarrier LNP testing with wireless carriers.

III. ISSUES PERTAINING TO A PORT FROM A WIRELESS CUSTOMER TO A LEC

Wireless carriers, unlike LECs, are not required by statute to provide LNP. Under the regime that Congress established, LECs are required to port to LNP-capable wireless carriers but wireless carriers were not required to port to LECs. The Commission nonetheless “filled the gap” by adopting the wireless LNP rule, determining that the rule is “necessary to preserve consumer choice and enhance competition among CMRS carriers and between the wireless and wireline industries.”²³

Qwest now states it is interested in competing for Sprint PCS’ customers (although it has never asked Sprint PCS to provide LNP). Sprint acknowledges that it is technically feasible for a wireless customer to port his/her number to a LEC although the expected demand for such porting could be debated.

In this regard, Qwest is concerned about one subset category of wireless customers – those who, “although located in one wireline rate center, do not have matching TNs from that same rate center.”²⁴ According to Qwest, it is “technically unable to compete for” such a wireless customer, and this inability to complete would put Qwest at an “enormous competitive disadvantage.”²⁵ ***This Qwest assertion is factually inaccurate because Qwest can serve these customers with its tariffed foreign exchange service.*** As Qwest describes its FX service, Qwest customers can “remain in their current rate center and receive dial-tone from another rate center.”²⁶ In other words, with its FX service, Qwest can serve a customer who is physically located in one rate center while the customer’s number is rated in a different rate center – the very situation about which Qwest complains.

Qwest’s only response is that its FX service was designed to use “a new TN” rather than a ported number and that its current offering contains a rather sizable nonrecurring charge.²⁷ The fact that FX service was designed before LNP became available does not mean that the service cannot be used with a ported number. And the fact that some of Qwest’s current FX prices are high is not a reason to ban LEC-CRMS porting. Indeed, intermodal porting may cause Qwest to reduce its service prices – if Qwest is interested in competing for this one category of wireless customers.

²² See 47 U.S.C. § 251(b)(2).

²³ *Verizon Wireless LNP Forbearance Denial Order*, 17 FCC Rcd 17972, 14986 ¶ 34 (2002).

²⁴ Qwest Oct. 17 Letter at 1.

²⁵ *Id.*

²⁶ *Id.* at 3 n.5.

²⁷ See *id.*

Moreover, Qwest's proposed solution to this "mismatch problem" – "wireless carriers could alleviate concerns about competitive neutrality by obtaining numbers identified with each rate center from which it seeks to port numbers"²⁸ – makes no sense. First, this "solution" does not solve Qwest's claimed "mismatch problem" because even if wireless carriers obtained numbers rated to each rate center, customers would not necessarily select numbers associated with their "physical address" (however defined). In addition, this Qwest "solution" would not be consistent with the public interest and the Commission's number conservation policies. Under this Qwest proposal, Sprint PCS alone would be required to obtain at least nine million additional telephone numbers that it does not need – or more numbers than are contained in a single area code – and the impact on area code exhaust would be more severe when one considers that other wireless carriers would similarly be required to obtain additional numbers in each LEC rate center.²⁹ As NANC has observed, the "solution" that Qwest now champions "would have a significant negative impact on NPA exhaust" while serving no purpose, because there is "no technical need from a routing or rating perspective . . . for this restriction" (wireless numbers in every LEC rate center).³⁰

There are other alternatives that Qwest could pursue. As noted, Qwest can serve these customers with its foreign exchange service. If Qwest does not like this option, it could enlarge its rate centers so they become co-extensive with its local calling areas, and thereby offer ordinary exchange service to this one category of wireless customers.³¹ The reduction of rate centers would also have important number conservation benefits.³² In the end, the real "mismatch problem" is that many LECs, seven years after the Act and the original LNP requirement, are seeking to avoid competitive market forces and impacts. Now they seek the Commission's protection.

One point should be uncontested – namely, deferring the date that LEC customers can port their numbers to wireless carriers is not a solution to what Qwest perceives is a "competitive parity" issue. It was LECs, not wireless carriers, that chose to develop their LNP rules around their rate center boundaries – rules that wireless carriers are willing to abide by.³³ And LEC customers should not be penalized for this decision.

²⁸ Qwest Oct. 17 Letter at 9.

²⁹ See Letter from Luisa Lancetti, Sprint, to William Maher, WCB Chief, and John Muleta, WCB Chief, CC Docket No. 95-116, at 8 (Aug. 8, 2003).

³⁰ NANC, *Wireless-Wireline Integration*, Appendix D – Rate Center Issue, at 38, Appendix A (May 8, 1998).

³¹ According to Qwest, it "averages two rate centers per local calling area. Letter from Cronan O'Connell, Qwest, to Marlene H. Dortch, FCC Secretary, CC Docket No. 95-116, at 2 n.4 (Sept. 17, 2003).

³² See, e.g., *Second Numbering Resource Optimization Order*, 16 FCC Rcd 306, 312 ¶ 8, 321 ¶33 (2000).

³³ There is no basis to Qwest's assertions that it is wireless carriers that "disable" and "prevent wireline carriers from winning wireless customers." Qwest Oct. 17 Letter at 6 and 8 n.11.

William Maher, Chief
John Muleta, Chief
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Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed electronically with the Secretary's office for filing in CC Docket No. 95-116.

Respectfully submitted,



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